

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KIRTI TIWARI, et al.,

**Plaintiffs,**

V.

C17-242 TSZ

JAMES MATTIS, Secretary,  
U.S. Department of Defense, in his  
official capacity,

## Defendant.

## MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiffs' motion in limine, docket no. 155, is DENIED in part and DEFERRED in part as follows. To the extent that plaintiffs seek to exclude certain Department of Defense ("DoD") witnesses from testifying, their motion in limine is DENIED. Whether these DoD witnesses intend to or are attempting to provide expert opinions without having been properly and timely disclosed pursuant to Federal Rule of Civil Procedure 26(a)(2) is DEFERRED to trial.

(2) Defendant's motions in limine, docket no. 154, are DENIED in part, STRICKEN in part, and DEFERRED in part as follows.

(A) Defendant's motion to exclude the testimony by perpetuation deposition of plaintiffs Lieutenant Kirti Tiwari, Sergeant Raj Chettri, Sergeant Seung Yoon Yang, and Specialist Amandeep Singh is DEFERRED to the Pretrial Conference.

(B)(i) Defendant's motion to exclude the deposition testimony of DoD witness Latrice McSwain is DENIED. If plaintiffs wish to call Ms. McSwain in their case-in-chief, the DoD shall make her available for such purpose. If Ms. McSwain appears to testify in plaintiffs' case-in-chief, defendant shall contemporaneously conduct its examination of her so that she does not have to

1 return at a later time during trial. If Ms. McSwain does not appear to testify in  
2 plaintiffs' case-in-chief, either side may use her deposition as permitted under  
3 Federal Rule of Civil Procedure 32.

4 (B)(ii) Defendant's motion to exclude the deposition testimony of  
5 DoD witnesses Mary Dandridge (located at Fort Stewart, Georgia), Curtis  
6 Kingsland (located at DoD Consolidated Adjudications Facility, Maryland), and  
7 Terrill White (located at Fort Bragg, North Carolina) is DENIED. See Fed. R.  
8 Civ. P. 32(a)(1) & (4)(B). Any objections to specific questions and/or answers are  
9 deferred to trial.

10 (C) Defendant's motion to exclude the testimony of Naomi Verdugo,  
11 Ph.D. is DENIED in part and DEFERRED in part. Dr. Verdugo will be permitted  
12 to testify at trial. Defendant's objections concerning possible bias or undue  
13 influence by plaintiffs' counsel during the course of Dr. Verdugo's deposition go  
14 to the weight, not the admissibility, of Dr. Verdugo's testimony. The appropriate  
15 scope of Dr. Verdugo's testimony is DEFERRED to the Pretrial Conference.

16 (D) Defendant's motion to require plaintiffs to revise their witness list  
17 is STRICKEN as moot.

18 (3) Defendant's motion in limine, docket no. 158, is DEFERRED to the  
19 Pretrial Conference. Defendant's motion seeks to exclude the testimony of Margaret  
20 Stock on the grounds that she is married to and the law partner of plaintiffs' counsel Neil  
21 O'Donnell. The Court will hear oral argument at the Pretrial Conference concerning this  
22 motion. Counsel shall be prepared to address (i) whether Ms. Stock will be called to  
23 testify as a fact witness or an expert; (ii) whether the appropriate remedy for the situation  
at issue is disqualification of Mr. O'Donnell or exclusion of Ms. Stock; Joseph Shaeffer  
of MacDonald Hoague & Bayless has been local counsel for plaintiffs since the inception  
of this case, and he is expected to "be prepared to handle the matter, including the trial  
thereof" in the event that Mr. O'Donnell and his firm are disqualified; see Local Civil  
Rule 83.1(d)(2); and (iii) whether the Court has the inherent authority to exclude  
Ms. Stock as an expert witness on public policy grounds given her involvement in this  
and other similar or related cases; see Perfect 10, Inc. v. Giganews, Inc., 2014 WL  
10894452 at \*5 (C.D. Cal. Oct. 31, 2014).

24 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of  
25 record.

26 Dated this 6th day of November, 2018.

27 William M. McCool \_\_\_\_\_  
28 Clerk

29 s/Karen Dews \_\_\_\_\_  
30 Deputy Clerk